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Letter dated 29 August 2008 from the Permanent Representative of the Philippines to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to request that the full version of the Philippine statement for the open debate concerning the working methods of the Security Council, particularly the implementation of measures contained in the note by the President (S/2006/507), held on 27 August 2008 (see annex), be circulated as a document of the Security Council.

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Annex to the letter dated 29 August 2008 from the Permanent Representative of the Philippines to the United Nations addressed to the President of the Security Council

My delegation wish to start with this Serenity Prayer attributed to Reinhold Niebuhr:

God give us the grace to accept with serenity the things that we cannot change;

Courage to change the things which should be changed;

And the wisdom to distinguish one from the other.

For the Security Council, calls for changes or reforms are becoming louder and stronger. In due course, they may even become irresistible. For this open debate, the focus is on changes or reforms in its working methods.

Many Member States, including the Philippines, believe that this area of Security Council reform is the least controversial and is immediately achievable. These changes on reform in its working methods could have been successfully pursued much earlier were they not, unfortunately, mingled with or tied to the apron strings of other Security Council reform proposals, such as on the question of equitable representation on and increase in the membership of the Security Council, or even on the veto power. The genesis of the need for Security Council reforms may even be said to have begun from its establishment.

The question of equitable representation on and increase in the membership in the Security Council appeared on the agenda of every session from 1979 to 1990 without being debated. The issue of reforms in its working methods saw birth after the constitution in 1993 of the Open-ended Working Group (General Assembly resolution 48/26); and appeared in the Group's third report, of 13 September 1996 (A/50/47). That was exactly 21 years, 11 months and 14 days ago today. Yet nothing concrete has happened.

This open debate today is a clear message that reforms in the working methods of the Security Council can, and should, be taken separately from the other reform proposals which are more complex and complicated. This open debate attests to the acknowledgement by the Security Council of the need for it to come openly into the picture and demonstrate its political will and moral courage to reform its own working methods.

Thus, the Philippines commends and expresses gratitude to the Belgian presidency of the Security Council for holding this open debate in the last week of its presidency, thereby happily ending its stewardship with a historic event. The Philippines also commends, first, the Security Council and its members, for its efforts to address the concerns raised by Member States on its working methods, especially for the work of the Council's Informal Working Group on Documentation, which produced the landmark note by the President (S/2006/507) of 19 July 2006. Fittingly and appropriately, this note is at the heart of this open debate. The note, a user-friendly compilation of the Council's best practices and newly agreed measures, is an exceptionally good first step in making the Council's work more transparent to the general membership. Second, the S-5 Group, composed of Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, for its perseverance and persistence in pursuing its advocacy to improve the working

methods of the Council and for its initiative to propose the holding of this open debate today. Third, Japan, which, as Chair then of the Working Group, came out with the presidential note. We are confident that Panama, the current Chair of the Working Group, would with zeal and sustained dedication, continue the work of the Working Group. Fourth, Viet Nam, for conducting almost at the end of its presidency of the Security Council last month the first informal meeting open to all Member States to solicit comments and suggestions on the drafting of the Council's annual report. Finally, the Austrian Mission for sponsoring the Austrian Initiative 2004-2008 on the Security Council and the rule of law. A few months ago it launched its final report and recommendations, which contains constructive and useful recommendations.

Howsoever viewed, strong, valid, just and equitable grounds exist why the Security Council should now decide and adopt the needed changes or reforms in its working methods.

We must bear in mind — and never forget — that pursuant to Article 24 of the Charter, for the purpose of ensuring prompt and effective action, the Member States have conferred on the Security Council primary responsibility for the maintenance of international peace and security. From the book of Bruno Simma (*The Charter of the United Nations, A Commentary*, vol. 1, 2nd ed., 449) we find that a majority view holds that this conferment is a surrender of a part of the Member States' sovereignty. A minority view holds that this conferment is but a delegation of powers by Member States. It follows that, as of today, 177 Member States have, under the majority view, surrendered a part of their sovereignty; or, under the minority view, delegated a part of their powers to the Security Council for this purpose only, to wit: ensuring prompt and effective action in the maintenance of international peace and security. In carrying out its duties in relation to this responsibility, the Security Council is vested tremendous specific powers under Chapters VI, VII, VIII and XII of the Charter. According to Simma (op. cit. 448), the enumeration of specific powers does not preclude the exercise of general powers, for the granting of "specific" powers logically presupposes the granting of "general" powers. Note also that, under Article 25 of the Charter, all Member States have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter. For this reason, Article 24 makes it clear that, in carrying out its powers, the Security Council must act on their behalf, and in discharging these duties it shall act in accordance with the principles and purposes of the United Nations. These are impositions of solemn burdens that demand accountability at all times.

It may further be pointed out that under Article 94 (2) of the Charter the Security Council is tasked with the power and duty to execute or enforce judgments of the International Court of Justice.

All told, and in the light of the decisions, resolutions and actions it has so far taken in the exercise of its powers, express or implied, the Security Council is described as a legislator, judge and executive in the final report and recommendations from the Austrian Initiative 2004-2008 I mentioned earlier.

It is needless to stress that because of such tremendous powers as legislator, judge and executive, the Security Council, either as holder — or better yet, trustee — of the surrendered part of the sovereignty of Member States or as their delegate/agent for the exercise of that surrendered part, must, in its working

methods — now principally condensed in its rules of procedure — strictly adhere to democratic practices and procedures; observe due process; and guarantee fairness, justice and equity to all concerned. Otherwise stated, as recommended in the final report and recommendations from the Austrian Initiative, it must observe the Rule of Law in all its proceedings.

Among the essential elements of these guiding principles are accountability, fidelity to the trust, predictability and transparency.

Thus, in general, the Philippines strongly recommends that those portions of the note by the President (S/2006/507) that relate to these guiding principles and essential elements must now be reduced or converted into concrete and specific rules to be embodied in the rules of procedure.

In particular, the Philippines requests the kind indulgence of the Council to look deeper into and consider these specific reform proposals which necessarily involve changes in or amendments to its rules of procedure.

First, the rules of procedure of the Security Council, which have remained provisional for 62 years, must now cease to be provisional. This would remove any doubt, even perhaps only lingering, that the Security Council has made them so to give it unlimited flexibility to disregard or change them at any time, thereby making its future judgements or actions unpredictable. Such doubt should not be allowed a moment longer for it would not contribute to the respect and esteem due to the Security Council or to the strengthening of the trust and confidence in it of the Member States.

Consequently, the word provisional in the body of its rules, described and known as the provisional rules of procedure of the Security Council, should be deleted. Such deletion would do no harm to the Council. So far, the processes or methods through which its actions, resolutions or decisions were reached have been guided by application or interpretation of the rules, and by application of the principles of international law, as well as of the doctrines of *res judicata* or *stare decisis* in appropriate cases. These have bound the Security Council to observe and maintain consistency. Consider too, that in 62 years there have been, I understand, only six revisions to the rules. This is proof that the rules of procedure have gained a very high degree of permanency. And if account is taken of the fact that among the principal organs of the United Nations only the Security Council has retained or maintained provisional rules of procedure, then something indeed is amiss. Many may find the provisional character of the 62-year-old rules of procedure of the Security Council a conundrum in judicial practice; they cannot divine its logic. In this regard, I also concur with the recommendation of the Austrian Initiative I earlier mentioned that it would be part of the Security Council's commitment to the rule of law that it should adopt formal rules of procedure rather than continuing to rely on provisional rules.

Second, due process and the rule of law demand that Member States which are not members of the Security Council but are the subject of Security Council scrutiny should have the right to appear before the Council at all stages of the proceedings thereon to state or defend their position on the issue subject of or related to the scrutiny. At present such participation is unfairly limited by rules 37 and 38 of the provisional rules of procedure. Under section 37 such non-Security Council member State may be invited to participate only as a result of a decision of the Council, and

only when the Council considers that the interests of such non-member are specially affected, or when such non-Security Council member brings a matter to the attention of the Council in accordance with Article 35 (1) of the Charter. Why should the appearance of such non-Security Council member be limited to only after a decision has been reached? And why should such appearance be at the discretion of the Council? This is a denial of due process, a violation of the basic principle of the rule of law. Due process and the rule of law require that a party must be heard before it is condemned.

Then, under rule 38, while any Member of the United Nations invited to participate under rule 37 or in application of Article 32 of the Charter may submit proposals and draft resolutions, these proposals or draft resolutions can be put to the vote only at the request of a representative on the Security Council. Why allow the State concerned to submit proposals or draft resolutions when these cannot at all be voted upon unless a Council member so requests? If the proponent State has no friends in the Council, the right given to it to propose is rendered meaningless, an exercise in futility.

Thus, the Philippines recommends that rule 37 be amended such that a United Nations Member State which is not a member of the Security Council but which is under its scrutiny has the right to be present and to be heard during all proceedings in regard to such scrutiny and in any subsequent incident which may arise therefrom; and that rule 38 be amended such that the proposals or draft resolutions submitted by such State shall be deliberated, acted upon and voted by the Security Council without the requirement of a request from a member thereof.

Third, in view of the great increase in the general membership of the United Nations from the time of its founding, there is a need for the Security Council to hear the views of the general membership. Hence, the Council should increase the number of meetings, including its informal meetings, which are open to the general membership at various stages of consideration of a particular matter. This will further promote accountability and transparency and tend to enhance more active cooperation of the general membership with the Council on the implementation of decisions taken on such matter. The Philippines is pleased to know that the note by the President reaffirms the commitment to increase recourse to open meetings. The necessary changes in this regard can be reflected in chapter I of the rules of procedure.

Fourth, in compliance with the requirements of the principles of accountability and transparency, the Security Council should consider the wisdom and propriety of the desire of Member States, particularly those which are not members of the Council, to full information on issues discussed by it. They expect output documents to be faithfully or truly reflective of the discussions/deliberations in the Council. In short, they want to know if, indeed, the Council has acted on their behalf in accordance with Article 24 of the Charter. Fidelity to this relationship is best reflected in the annual report of the Council. The first informal meeting on the matter of the annual report convened during the presidency of Viet Nam last month disclosed many significant observations. The Philippines then expressed the view that the report must be comprehensive and analytical, and must indicate the action taken by the Council and the views of the members during the consideration of the agenda items. These will provide the general membership the information as to how the individual members of the Council justified their position on any issue,

especially those concerning a Member State or when a permanent member exercised the veto power. It has been observed that, as presented now, the annual report is not actually a report according to the true meaning of the nomenclature. One would find to be more useful the *Repertoire of the Practice of the Security Council* published by the Secretary-General pursuant to General Assembly resolution 686 (VII). The *Repertoire* is a veritable constitutional guide to the proceedings of the Security Council. The Council may look into the way the *Repertoire* is crafted and see how the presentation of information can be done beyond simple documentation. The Council and the Secretariat may consider working together on an appropriate format which could provide the substantive information sought by Member States without, of course, divulging confidential information. In short, they may consider combining or merging the annual report and the *Repertoire*.

The Security Council should also consider releasing periodic reports or substantive summaries to the General Assembly on matters of which the Council is seized during the course of each year — given that the annual report to the General Assembly deals with matters considered during the preceding year. Periodic reporting would enable the General Assembly and the general membership to gain a more current appreciation of the status of matters before the Council.

The views expressed by the Philippine delegation and other delegations which have spoken or will yet speak are not addressed to a different audience. The Security Council members are also members of the General Assembly and know too well the valid concerns raised by the general membership. Thus, we hope to see the light at the end of the tunnel on the issue of reforms in the working methods of the Security Council within a reasonable time from today.

Let me end by quoting Charles Kettering: "The world hates change, yet it is the only thing that has brought progress."